



Comptroller General
of the United States
Washington, D.C. 20548

McGrail

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Decision

Matter of: Metropolitan International Resources, Inc.

File: B-258011; B-258012

Date: November 17, 1994

Noah Goldman for the protester.
W. S. Spotswood, Jr., for Fiskars, Inc., an interested party.
David L. Frecker, Esq., General Services Administration, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests objecting to agency's failure to furnish potential competitor with copies of solicitations are denied where record demonstrates that the agency properly synopsis procurements in the Commerce Business Daily; mailed copies of a pre-solicitation notice to over 500 sources and copies of the solicitations to the sources that responded affirmatively to the pre-solicitation notice; and obtained competition and reasonable prices.

DECISION

Metropolitan International Resources, Inc. protests any award by the General Services Administration (GSA) under request for proposals (RFP) No. 6FEP-CO-AV-940079-N and invitation for bids (IFB) No. 6FEP-CO-AV-940079-S, both for scissors and shears. The protester complains that the agency failed to furnish it with a copy of either solicitation, thereby depriving it of the opportunity to compete.

We deny the protests.

The agency published notice in the April 8, 1994, Commerce Business Daily (CBD) that on approximately April 15 it intended to mail out pre-solicitation notices concerning its upcoming solicitations for scissors and shears, which were due to issue on about June 14 and to close on about July 22. On April 18, the agency forwarded copies of the pre-solicitation notice to the sources listed on its automated mailing list and those listed on the contracting officer's handlist (a listing of current contractors, previous

bidders, and companies responding to the CBD notice). Metropolitan, as a previous bidder, was listed on the contracting officer's handlist. The notices asked sources to advise the agency by May 20 whether or not they intended to bid. Metropolitan did not receive the notice mailed to it and therefore did not submit a response.

Synopses of the two solicitations were published in the June 1 CBD, and both were issued on June 20. Copies of the two solicitations were mailed to the 46 sources that had responded to the pre-solicitation notice or to the CBD announcement. Since Metropolitan had done neither, it was not furnished with copies of the solicitations. Eleven bids were received by the IFB's July 20 opening date, and seven offers were received prior to the RFP's July 21 closing date. Metropolitan protested to our Office on July 27.

The protester contends that the agency denied it the opportunity to compete by failing to furnish it with copies of the two solicitations.

Under the Competition in Contracting Act of 1984 (CICA), agencies are required to obtain full and open competition through the use of competitive procedures when procuring property or services. 41 U.S.C. § 253(a)(1)(A) (1988). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." 41 U.S.C. § 259(c). Accordingly, we carefully scrutinize allegations that a firm has not been provided an opportunity to compete for a particular contract and take into account all of the circumstances surrounding the firm's nonreceipt of the solicitation materials, as well as the agency's explanations. Sutton Designs, Inc.--Recon., B-235382.2, Aug. 11, 1989, 89-2 CPD ¶ 131. In this regard, we will conclude that the agency has met its obligation if it has made a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice and distribution of solicitation materials and it obtains competition and reasonable prices. Rut's Moving & Delivery Serv. Inc., 67 Comp. Gen. 240 (1988), 88-1 CPD ¶ 139.

Here, we see no evidence that the agency failed to comply with the statutory or regulatory requirements governing notice or distribution of solicitation materials. The agency publicized both the pre-solicitation notice and the solicitations in the CBD, and mailed copies of the pre-solicitation notice to more than 500 sources, including the protester. Then, in accordance with Federal Acquisition Regulation (FAR) §§ 14.203-4(c) and 15.404(b), which provide for the distribution of solicitation documents only to the sources responding affirmatively to pre-solicitation notices or otherwise requesting them, the agency furnished copies of the solicitations to the 46 concerns that had expressed an

interest in the solicitation. It received 7 offers in response to the RFP and 11 bids in response to the IFB, at prices which the agency has determined to be reasonable.

The protester argues that its failure to receive either solicitation or the pre-solicitation notice demonstrates that the agency was deliberately attempting to exclude it or that the GSA personnel responsible for mailing out the solicitations were grossly incompetent. In this regard, the protester contends that "it would be possible to accept the loss in the mail of one piece of paper on any given solicitation, but it strains credibility to accept that two [presolicitation notices] . . . and two solicitations would not be received."¹

Although we too might be skeptical if an agency claimed to have made four separate mailings to a source, none of which was received, that was not the case here. GSA claims to have made only one mailing to the protester: a single pre-solicitation notice concerning both solicitations.² Because the protester did not respond to the pre-solicitation notice or specifically request a copy of either solicitation, the agency did not mail either one to it. Thus, only one piece of correspondence was lost in the mail, a circumstance that, as the protester itself concedes, is suggestive of neither bad faith nor negligence on the part of agency personnel.

The protester notes that another former bidder and prospective competitor under these solicitations, Polaris Corporation, also failed to receive the two solicitations.³

¹The protester's concession that "it would be possible to accept the loss in the mail of one piece of paper on any given solicitation" is consistent with the position of our Office that procuring agencies are not insurers of the delivery of solicitation documents to prospective competitors, and those firms bear the risk of nonreceipt. Sutton Designs, Inc.--Recon., B-235382.2, supra.

²The agency mistakenly noted in its report that separate pre-solicitation notices had been issued for the two solicitations; upon questioning by our Office, however, GSA clarified that only one had in fact been issued.

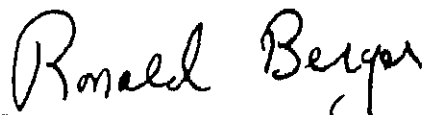
³Polaris filed a protest with our Office concerning its nonreceipt of the solicitations. The agency explained in its report responding to Polaris's protest that Polaris had been inadvertently omitted from the contracting officer's handlist and thus had not been mailed a copy of the pre-solicitation notice. Since Polaris failed to comment on the
(continued...)

Metropolitan contends that GSA's failure to solicit two companies suggests that the agency was deliberately attempting to restrict the competition.

We disagree. In our view, the fact that more than 400 copies of the pre-solicitation notice and 46 copies of the solicitations were mailed out and that bids or offers were received from a total of 12 companies' demonstrates that the agency was not deliberately attempting to restrict competition. See Shemva Constructors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108. Further, since the record does not establish that GSA was responsible for Metropolitan's nonreceipt of the pre-solicitation notice, we fail to discern any pattern of negligence on the part of the agency.

Since the record demonstrates that GSA complied with the statutory and regulatory requirements regarding notice and distribution of solicitation materials and that it obtained competition and reasonable prices, we see no basis upon which to sustain Metropolitan's protest.

The protests are denied.


for Robert P. Murphy
Acting General Counsel

³(...continued)
agency report, we dismissed its protest. See 4 C.F.R.
§ 21.3(j) (1994).

⁴ All but one of the bidders under the IFB also submitted an offer under the RFP.